

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

XIAODAN ZHU,
Plaintiff,
v.
GARY GE,
Defendant.

Case No. [19-cv-08028-SI](#)

**ORDER DENYING MOTION BY
PLAINTIFF/COUNTER-DEFENDANT
TO DISMISS COUNTERCLAIM**

Re: Dkt. No. 26

On December 9, 2019, pro se plaintiff Xiaodan Zhu filed a complaint against Gary Ge. Dkt. No. 1. On December 16, 2019, plaintiff filed an amended complaint alleging (1) breach of contract, (2) unjust enrichment, and (3) fraud. Dkt. No. 9. On February 18, 2020, Mr. Ge, also pro se, filed an answer and counterclaim for breach of contract. Dkt. No. 23. On April 14, 2020, plaintiff/counter defendant Xiaodan Zhu filed the instant motion to dismiss Mr. Ge's counterclaim. Dkt. No. 26.

The parties were previously business partners and opened a restaurant in San Jose together. Dkt. No. 9 at 3¹ (Amended Complaint); Dkt. No. 23 at 5 (Counterclaim). The restaurant opened in approximately January 2018. *Id.* The restaurant was sold in approximately March 2018. Dkt. No. 9 at 3; Dkt. No. 23 at 6.

Ms. Zhu's motion to dismiss does not make a single legal argument; indeed, it does not state the basis for the motion to dismiss, failing to specify what type of 12(b) motion she brings. Rather,

¹ For ease of reference, page citations refer to the ECF branded page number in the upper right corner of documents.

Ms. Zhu puts forth a litany of factual arguments inappropriate for a motion to dismiss and perhaps better suited for summary judgment. Dkt. No. 26.

The motion to dismiss is therefore DENIED.

IT IS SO ORDERED.

Dated: June 8, 2020

A handwritten signature in cursive script, reading "Susan Illston", written in black ink.

SUSAN ILLSTON
United States District Judge